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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,123	03/15/2001	Victor Marcus Lewis	14219	2983

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EXAMINER	
PRATT, HELEN F	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 09/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/744,123	LEWIS ET AL.	
	Examiner	Art Unit	
	Helen F. Pratt	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on 7-15-04.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-18 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s) - Send

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-15, 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. 5,723,167 in view of Rahman et al. 3,950,560 and Rahman et al. 4, 109,026.

Lewis et al. disclose a product and process of making a dehydrated vegetable by dehydrating a vegetable piece (claims 2 and 10) to between 15 and 60% (claims 7 and 9), and compressing the vegetables as in claims 9 and 10 (col. 9, lines 20-30, col. 2, lines 49-55). Water activity controlling solutes as in claims 3, 4, 11 and 12, 17 and 18 can be added to the vegetables before pressing (col. 5, lines 35-64 and col. 10, lines 20-30). They are used in amounts from 2-6% (col. 6, lines 60-64). Claims 5 and 6 further requires that the vegetable product have an even lower moisture content of 2-12% and 4% respectively, claim 8 requires that the compressed piece is further dehydrated to from 2-10% and claim 13 further requires that the compressed vegetable piece is dehydrated to from 2-12% moisture. Lewis et al. also disclose a dehydrated vegetable product which contains a moisture content of between 15 and 60%. Claims 1-13, 15, 17 and 18 differ from the reference in the step of further dehydrating to a moisture content of 12% or lower. The Rahman et al. references '560 and '260 disclose

first drying a vegetable to from 7-18% then compressing the predried vegetable, and then redrying the compacted vegetable to less than 5% (abstracts). Therefore, it would have been obvious to dehydrate to a lower degree in the process of Lewis et al. using the further drying steps of the Rahman et al references.

Claim 1 further requires that the vegetable is a fleshy vegetable. However, carrots are disclosed in Lewis which is a fleshy vegetable (col. 8, lines 55-65).

The further limitation as in claims 1 and 9 as to rehydrating the vegetable pieces are disclosed since the process and process has been disclosed. Therefore, it would have been obvious to make a product, which had the claimed rehydration characteristics and which is a fleshy vegetable as disclosed by Lewis et al.

Claim 14 further requires drying the vegetable piece to from 4-6%. Rahman et al. disclose drying cabbage to 5-8 % before rehydrating to 10-20% and then compressing (abstract). The step of rehydrating to 10-20% is not excluded from the reference. Therefore, it would have been obvious to dry to within the claimed level as shown by Rahman '026 in the process of Lewis et al.

Claim 15 further requires that the vegetable piece is compressed in a roller mill to 0.2 to 2.5 mm. Rahman et al. disclose a compression of from 1/8 to ½ inch thickness. The particular apparatus is not given weight in a composition claim. It would have been within the skill of the ordinary worker to press to a particular size. Therefore, it would have been obvious to press a vegetable to a particular size as shown by Rahman et al.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claims 1-15, 17, 18 above, and further in view of Sterner et al. (4,735,816).

Sterner et al. disclose a method of partially drying beans and pressing the beans into flakes and then further dehydrating the pressed bean flakes (col. 3, lines 32-35, col. 4, lines 49-66). The beans are pressed to a thickness from 0.005 inches to 0.2 inches, which is within the claimed range. Therefore, it would have been obvious to press other vegetables at within the claimed range as in the process of the above combined references which are also to be dehydrated in order to promote drying of the vegetables (col. 3, lines 36-40).

Claims 9, 10, 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rahman et al. 3,950,560.

Rahman discloses a process of making a dehydrated vegetable product by practically dehydrating vegetable pieces from 7 to 18 %, compressing the vegetable, and then further redrying or dehydrating the vegetable to 5 % (abstract and col. 3, lines 39-70, col. 4, lines 15-55). Rehydration of the vegetable piece is disclosed in col. 5, lines 10-19). Claims 9, 13, 14 differ from the reference in the step of rehydrating the vegetable piece at 90 to 100 C. However, as the process has been shown, and the degrees of drying are within the claimed ranges, the product could also be rehydrated at the claimed range and give the claimed product. Therefore, it would have been obvious to treat as disclosed by the reference.

Green peas and beans as in claim 10 are disclosed in col. 6. Therefore, it would have been obvious to use known vegetables in the claimed composition.

Claims 1-8, 11-12, 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rahman '560 as applied to claims 1-10, 13, 14 above, and further in view of Rahman 4,109,026.

Claim 11 further requires pressing the vegetable in one dimension and adding solutes to the piece and claim 12 requires particular solutes. Raman et al. discloses pressing in a Carver press (col. 6, lines 20-25). Nothing is seen that the pressing is not in one dimension. Rahman et al.'026 discloses adding an aqueous sodium metabisulfite solution before compressing (abstract). Claim 12 requires particular solutes. However, the specification discloses that it known to add solutes to vegetables which are to be dehydrated (page 5, lines 6-15). Therefore, it would have been obvious to press the vegetables as disclosed by Raman et al. and to use the solutes as disclosed by the specification in place of the solutes as disclosed by Rahman et al. '026 for their stated function of increasing the rehydration of the food product.

Claims 17 and 18 further require that the solutes are present in amounts from .3 to 10%. Rahman et al. '026 disclose rehydrating to 10-20 % with a surfactant which is considered to be a solute (abstract). Therefor, it would have been obvious to rehydrate to the claimed amount as shown by Rahman et al. '026 in the process of Rahman '560 because rehydration is shown as being known as in the Specification and in Rahman et al.'026.

The limitations of claims 1-8 have been disclosed above and are obvious for those reasons except for the required fleshy vegetable, which is disclosed as being peas or green beans (col. 6, lines 10-50).

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Rahman et al. '3,950,560 as applied to claims 1-14, 17, 18 above, and further in view of Sterner et al. (4,735,816).

Sterner et al. disclose a method of partially drying beans and pressing the beans into flakes and then further dehydrating the pressed bean flakes (col. 3, lines 32-35, col. 4, lines 49-66). The beans are pressed to a thickness from 0.005 inches to 0.2 inches, which is within the claimed range. Therefore, it would have been obvious to press other vegetables at within the claimed range as in the process of the above combined references which are also to be dehydrated in order to promote drying of the vegetables (col. 3, lines 36-40).

ARGUMENTS

Applicant's arguments filed 12-15-03 have been fully considered but they are not persuasive. Applicants argue the Lewis reference is to vegetables that can be frozen and does not disclose vegetables that can be stored at room temperature and that Rahman I relates to vegetables which are not stored under freezing conditions, and Rahman II relates to uncooked cabbage which does not freeze well, and that Sterner et al. relates to dehydrating bean flakes that have been precooked. Applicants argue that a process for freezing vegetables is not compatible with one of drying vegetables, because of different considerations. However, the references are used for what they

teach as it is known to compact dehydrated vegetables. Even if cabbage does not freeze well, the reference still discloses particularly in '560 that it is known to dehydrate and compress.

Applicants argue that Sterner et al. is limited to beans and hard grains. This is not seen, as corn is included as claimed in the reference.

Applicants argue that if Lewis et al. was combined with Rahman I that the vegetable would have a low moisture content and be stored at zero C. However, this is not seen as Rahman I does not require a frozen product. One can use the teaching of Lewis et al. for dehydrating and compressing and then instead of freezing the product, can dehydrate it as dehydrating is well known as disclosed by the Rahman references. Dehydration is another method of preserving as is freezing.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP 8-25-04

H. Pratt

HELEN PRATT
PRIMARY EXAMINER